

What we will look at tomorrow is article I, section 8 of the Constitution. That is the article that specifically cites the powers that Congress—the Senate and the House—have. It is spelled out. In the course of spelling it out, it cites, among other things, that we have the power to tax, and we have the power related to provisions relating to commerce. It came to be viewed in the courts as interstate commerce—commerce between the States or between the United States and other nations.

Those who are arguing that the health care reform bill is unconstitutional first argue that the health care insurance industry is not commerce. If the health care insurance industry—which offers industry across State lines to millions of Americans—is not commerce, and it affects 18 percent of our economy, then I don't know what commerce might be. I think that position is particularly weak.

When it comes to the individual responsibility, or individual mandate system that is in the bill, the question is being asked of the court: Why is this necessary? Well, here is why it is necessary. If we say to insurance companies they don't have to insure anyone with a preexisting condition, then of course they are going to exclude people. But if we tell them they have to insure everybody, even those with preexisting conditions, then the obvious question is, when will a person buy insurance?

If we don't have a responsibility on individuals to buy insurance, two things will occur: They will wait until they are sick to buy insurance, which completely destroys the risk model that insurance companies use, or they will present themselves, as they do today, to many hospitals for coverage and care, the cost of which is passed on to other people. So the individual responsibility section says: If you don't have insurance coverage, then you have to pay a tax penalty. And that is what many are objecting to. You cannot eliminate exclusions for preexisting conditions and not move more and more people into the risk pool at an earlier stage. If people can wait until the last minute to get into the risk pool, then the insurance model is destroyed. That is why it is in there.

I think we will find, ultimately—and I hope we do—from the Supreme Court that what we have passed is entirely consistent with the regulations or powers given to Congress under article I, section 8 of the Constitution to deal with issues of commerce. Secondly, I think we will find that the imposition of a tax in this health care reform bill is clearly enumerated in the powers given to Congress to levy taxes, and what we have done is necessary and proper to reach the goal where we eliminate discrimination because of preexisting conditions in health insurance plans.

That debate is ahead of us, but it is a debate we need to take up. I am

happy to talk about the health care reform bill because I think it is moving in the right direction. It is not perfect—it can be improved—but if the Republicans want to repeal it, they are in for a fight because the important provisions we have to protect families and businesses need to be protected.

What we want to bring up as soon as we can—when we get beyond this debate on health care repeal—is the reauthorization of the Federal Aviation Administration. We have been struggling with this issue for a long time, and we believe this bill, which our majority leader HARRY REID has asked to bring to the floor, creates and protects more than 280,000 jobs by modernizing the air travel infrastructure and reducing costly delays. I think this is an important step forward not just to create jobs—and we need them very badly—but also to make certain our airplanes and airliners and all those who are serving us at the airports have a safer environment, establishing new standards for safety when it comes to the operation of our airlines.

I think this is a critical issue, and I hope we can move to it soon. I am sorry we are going to be diverted into a debate on health care reform. But as I said, I think it is a welcome debate. It is time we brought some of these facts before the American people so they understand health care reform has real value to families and businesses across the United States, making health care insurance more affordable and more accessible.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:32 p.m., the Senate recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. DURBIN).

FAA AIR TRANSPORTATION MODERNIZATION AND SAFETY IMPROVEMENT ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 223, which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 223) to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the Senate proceed to a period of debate only on the FAA authorization bill for the purposes of opening remarks from the chairman—that being me—and ranking member—that being Senator HUTCHISON—of the Commerce Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Madam President, I wish to thank the majority leader for bringing this bill to the floor so promptly—the first bill of this year, the 112th Congress. The Air Transportation Modernization and Safety Improvement Act reauthorizes the Federal Aviation Administration. It has been postponed 17 times over the last 4 years, to the consternation of all of us who care about this subject. There are three Commerce Committee members in the Chamber right now, and we are all frustrated about getting it done. So it is the first piece of legislation.

The bill which I introduced and which we are considering is the text of the FAA reauthorization bill that was approved by the whole Senate last year by a vote of 93 to nothing. All of the matters of safety and air traffic control systems and all the rest of it that we talk about are all incorporated already in this bill. Although the Senate and the House of Representatives informally conferred, it was not productive, and we were unable to come to a final resolution, so here we are once again. I thought that beginning this year's consideration of the FAA reauthorization bill with the legislation that did pass unanimously last year would signal a commitment to bringing forward a bill that had broad bipartisan support—at least last year. It wasn't that long ago. There are some new Members, and some issues still stand out. We didn't resolve all of them.

I wish to say at the beginning that this is a monumentally important bill. I would also say that I recognize without rancor that there are a lot of Members of the Congress who don't really keep up with aviation because they kind of take it for granted. It is highly technical and not always interesting but always important—always important. It employs 11 million people, just for a start. It is a vastly important bill, and we are vastly behind where we should be, and this bill will help us move forward.